UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

THE BRADLEY CENTER, INC.

Employer

and

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 504, AFL-CIO, CLC

Petitioner

Cases 6-RC-12425 and 6-RC-12426

REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION

On April 8, 2005, a Decision and Direction of Elections issued in these cases. As set forth therein, the Petitioner had sought, and I found appropriate, a single-facility unit of teachers, and a separate single-facility unit of nonprofessionals. On April 27, 2005, the Employer filed a request for review of these findings. This request for review has been treated as a motion for reconsideration pursuant to Section 102.65(e)(1) of the Board's Rules and Regulations, as amended.[1] On reconsideration, I adhere to my prior determinations, but issue this supplemental decision to clarify certain points.

At the hearing and in their post-hearing briefs, the parties did not formally raise or address the issue of whether the Employer was a health care institution within the meaning of Section 2(14) of the Act.[2] In its Request for Review, the Employer appears to assert that it is a

[1] The Petitioner's Opposition to the Employer's Request for Review was received by the Region on May 3, 2005, and has been duly considered.

[2] As noted in the Decision and Direction of Elections in this matter, the Employer is a social service agency operating residential treatment facilities, a residential treatment center, schools and a foster care program focusing on children with behavioral health issues. Neither party has cited, and research has not disclosed, cases discussing the application of Section 2(14) to an employer providing these types of services to this population. However, in a somewhat analogous context, the Board has generally found that facilities which provide residential care and training to mentally retarded children constitute health care institutions under the Act. See Resident Home for the Mentally Retarded, 239 NLRB 3, 6 and fn.11(1978). A contrary determination was made in the principal case relied upon by the Employer in support of its argument that the teachers must be included in an all professional unit. In that case, Upstate

nonacute health care institution.[3] Assuming arguendo that the Employer is a nonacute health care institution under the Act, I have re-examined the facts under the applicable precedent governing nonacute health care institutions. It is clear that this analysis does not change the results reached in the previously issued Decision and Direction of Elections.

Single-Facility v. Multi-Facility Units

It is well established that in the health care industry, as in other industries, there is a rebuttable presumption that a single-facility bargaining unit is appropriate. Manor Healthcare Corp, 285 NLRB 224 (1987). Further, the factors applied in considering the appropriateness of a single-facility unit in cases involving health care institutions include the traditional factors applied in other industries. Id. at 228. That was precisely the analysis utilized in the Decision and Directions of Elections, and I reaffirm my finding that the Employer did not rebut the single-facility presumption. In this regard, I note that, for the same reasons identified in Manor Healthcare, the single-facility units herein found appropriate are not inconsistent with the Congressional concern for avoiding undue unit proliferation in health care institutions.

Teachers v. All Professionals

When faced with issues of unit composition in nonacute health care institutions, the Board applies the "pragmatic or empirical community of interests" test set forth in Park Manor Care Center, 305 NLRB 872, 874-875 (1991). In this regard, the Board will consider community of interest factors, and factors deemed relevant by the Board in its rulemaking proceedings for collective-bargaining units in the health care industry, the evidence presented during rulemaking with respect to units in acute care hospitals,[4] and prior precedent. See also CGE Caresystems, 328 NLRB 748 (1999). In the previously issued Decision and Direction of Elections, I engaged

Home for Children, 309 NLRB 986, 988 fn.7 (1992), a residential facility for the mentally retarded was determined not to be a health care institution.

[3] In its Opposition to the Employer's Request for Review, the Petitioner does not directly address this issue.

[4] See 53 Fed. Reg. 33900 (1988) and 54 Fed. Reg. 16336 (1989), set forth in 284 NLRB 1516, et. seq.

in a comprehensive analysis of the community of interest factors of the teachers, which clearly established that the teachers had a distinct community of interest separate from the other professionals. However, the Employer asserts that under Park Manor, the only appropriate unit is a unit of all professionals. In making this assertion, the Employer relies in large part on its use of interdisciplinary teams as well as the Congressional concern over undue proliferation of bargaining units.

However, in applying the Park Manor test, the Board has rejected assertions that the only appropriate unit is a unit of "all professionals," even though the employers utilized a multidisciplinary team-based approach to care. South Hills Health System Agency, 330 NLRB 653 (2000); Charter Hospital of Orlando South, 313 NLRB 951 (1994); Hollinswood Hospital, 312 NLRB 1185 (1993); McLean Hospital Corp., 311 NLRB 1100 (1993).

Further, in its rulemaking process, the Board specifically rejected the argument that a "team approach" compels a conclusion that all professionals must be combined in one unit. The Board concluded the fact that some hospitals utilize a multidisciplinary team concept did not "detract from the separate appropriateness of RN units." 53 Fed. Reg. at 33913, 284 NLRB at 1546-1547. In this regard, the Board emphasized that the utilization of a multidisciplinary team approach is "a process to ensure that the elements of patient care are organized" but that such a consideration did not "alter each licensed professional's responsibility for his or her individual scope of practice." Id. Additionally, the Board noted that the participation of some RNs in team care did not affect wages, hours, benefits, training, skills, or functions of RNs on or off the teams. Id. Thus, I reaffirm my finding that the Employer's use of interdisciplinary teams does not, in the circumstances discussed in the Decision and Direction of Elections, compel a conclusion that a separate unit of teachers is inappropriate.

In its rulemaking process, the Board was not presented with and did not consider the situation presented here, where the Employer, in addition to providing mental health services, is also licensed to operate a private school and therefore, in addition to employing health care

providers, the Employer also employs certified special education teachers who develop an educational curriculum for each student acceptable to the local school district. The resultant differences between the health care professionals and the teachers were detailed in the prior Decision and Direction of Elections, and are not repeated herein. For the reasons set forth therein, I found that the teachers constitute one significant group of professional employees that have a community of interest which is clear and distinct from all other professionals employed by the Employer. Considering this finding in the context of the Board's treatment of RNs during the rulemaking process as discussed above, I find that just as a separate unit of RNs did not create an undue proliferation of bargaining units in an acute care hospital, here, a separate unit of teachers does not create an undue proliferation of units.

Whether the Congressional admonition as to undue proliferation of units in health care institutions would permit or prohibit separate bargaining units for the different groups of health care professionals employed by the Employer is not before me. However, I note that unlike an acute care hospital which typically employs a myriad of different classifications of health care professionals,[5] the Employer here has a very limited number of classifications of health care professionals, and only one professional health care classification with a sizable number of employees.[6] Thus, the concern regarding the undue proliferation of units present in an acute care hospital is substantially lessened here.

Nonprofessional Unit[7]

The parties agreed that a wall-to-wall nonprofessional unit was appropriate. The issues raised in connection with the nonprofessional unit were 1) whether the unit was a single or multi-

[5] E.g. Audiologists, chemists, dieticians, pharmacists, social workers, technologists, physical therapists, recreational therapists and occupational therapists to name a few.

[6] At the Mt. Lebanon facility, there are only four classifications of health care professionals: 13 mental health therapists, four RNs, three case managers and two QA/UR employees.

[7] No issue with regard to the composition of the nonprofessional unit was raised by the Employer in its Request for Review.

facility unit, and 2) whether the medical records assistants and receptionists were office clerical employees and whether the MTS employees were supervisors. The scope of the unit is addressed above. In considering the remaining issues relating to the nonprofessional unit, the analysis contained in the Decision and Direction of Elections incorporated health care institution precedent, including precedent consonant with the standards of Park Manor. Thus, no further discussion is necessary.

Conclusion

For all of the reasons set forth in the previously issued Decision and Direction of Elections, as supplemented by this Decision, I reaffirm the Direction of Elections.[8]

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **May 17, 2005**. The request may **not** be filed by facsimile.

Dated: May 3, 2005

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

[8] The elections are scheduled for May 5, 2005. Inasmuch as the parties are being provided with an opportunity to request review of this Supplemental Decision, the elections will proceed as scheduled, but the ballots will be impounded.